

Senate Bill 276

By: Senators Staton of the 18th, Harp of the 29th, Shafer of the 48th, Murphy of the 27th, Mullis of the 53rd and others

AS PASSED

AN ACT

To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to limit coverages under uninsured motorist provisions to automobile and motor vehicle liability policies and exclude umbrella and excess liability policies; to change the definition of "uninsured motor vehicle" to allow uninsured motorist coverage to be stacked with other available liability coverages; to allow insureds to select more restrictive uninsured motorist coverages; changes standards applicable to making and use of rates; changes prior approval requirements above mandatory minimum limits; to provide for related matters; to provide for effective dates and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by revising subsections (a) and (b) of Code Section 33-7-11, relating to uninsured motorist coverage under motor vehicle liability policies, as follows:

"(a)(1) No automobile liability policy or motor vehicle liability policy shall be issued or delivered in this state to the owner of such vehicle or shall be issued or delivered by any insurer licensed in this state upon any motor vehicle then principally garaged or principally used in this state unless it contains an endorsement or provisions undertaking to pay the insured damages for bodily injury, loss of consortium or death of an insured, or for injury to or destruction of property of an insured under the named insured's policy sustained from the owner or operator of an uninsured motor vehicle, within limits exclusive of interests and costs which at the option of the insured shall be:

(A) Not less than \$25,000.00 because of bodily injury to or death of one person in any one accident, and, subject to such limit for one person, \$50,000.00 because of bodily injury to or death of two or more persons in any one accident, and \$25,000.00 because of injury to or destruction of property; or

(B) Equal to the limits of liability because of bodily injury to or death of one person in any one accident and of two or more persons in any one accident, and because of injury to or destruction of property of the insured which is contained in the insured's personal coverage in the automobile liability policy or motor vehicle liability policy issued by the insurer to the insured if those limits of liability exceed the limits of liability set forth in subparagraph (A) of this paragraph. In any event, the insured may affirmatively choose uninsured motorist limits in an amount less than the limits of liability.

(2) The coverages for bodily injury or death or for injury to or destruction of property of an insured person, as provided in paragraph (1) of this subsection, may be subject to deductible amounts as follows:

(A) For bodily injury or death, deductibles of \$250.00, \$500.00, or \$1,000.00, at the option of any named insured in the policy. Deductibles above \$1,000.00 may be offered, subject to approval of the Commissioner;

(B) For injury to or destruction of property of the insured, deductibles of \$250.00, \$500.00, or \$1,000.00, at the option of any named insured in the policy. Deductibles above \$1,000.00 may be offered, subject to the approval of the Commissioner;

(C) Deductible amounts shown in subparagraphs (A) and (B) of this paragraph may not be reduced below \$250.00;

(D) Deductible amounts shown in subparagraphs (A) and (B) of this paragraph shall be made available at a reduced premium; and

(E) Where an insurer has combined into one single limit the coverages required under paragraph (1) of this subsection, any deductible selected under subparagraphs (A) and (B) of this paragraph shall be combined, and the resultant total shall be construed to be a single aggregate deductible.

(3) The coverage required under paragraph (1) of this subsection shall not be applicable where any insured named in the policy shall reject the coverage in writing. The coverage required under paragraph (1) of this subsection excludes umbrella or excess liability policies unless affirmatively provided for in such policies or in a policy endorsement. The coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to said insured by the same insurer. The amount of coverage need not be increased in a renewal policy from the amount shown on the declarations page for coverage existing prior to July 1, 2001. The amount of coverage need not be increased from the amounts shown on the declarations page on renewal once coverage is issued.

(4) The filing of a petition for relief in bankruptcy under a chapter of Title 11 of the United States Code by an uninsured motorist as defined in this Code section, or the appointment of a trustee in bankruptcy for an uninsured motorist as defined in this Code section, or the discharge in bankruptcy of an uninsured motorist as defined in this Code section shall not affect the legal liability of an uninsured motorist as the term 'legal liability' is used in this Code section, and such filing of a petition for relief in voluntary or involuntary bankruptcy, the appointment of a trustee in bankruptcy, or the discharge in bankruptcy of such an uninsured motorist shall not be pleaded by the insurance carrier providing uninsured motorist protection in bar of any claim of an insured person as defined in this Code section so as to defeat payment for damages sustained by any insured person by the insurance company providing uninsured motorist protection and coverage under the terms of this chapter as now or hereafter amended; but the insurance company or companies shall have the right to defend any such action in its own name or in the name of the uninsured motorist and shall make payment of any judgment up to the limits of the applicable uninsured motorist insurance protection afforded by its policy. In those cases, the uninsured motorist upon being discharged in bankruptcy may plead the discharge in bankruptcy against any subrogation claim of any uninsured motorist carrier making payment of a claim or judgment in favor of an uninsured person, and the uninsured motorist may plead said motorist's discharge in bankruptcy in bar of all amounts of an insured person's claim in excess of uninsured motorist protection available to the insured person.

(b)(1) As used in this Code section, the term:

(A) 'Bodily injury' shall include death resulting from bodily injury.

(B) 'Insured' means the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise; any person who uses, with the expressed or implied consent of the named insured, the motor vehicle to which the policy applies; a guest in such motor vehicle to which the policy applies; or the personal representatives of any of the above. For policies issued or renewed on or after July 1, 2006, the term 'insured' shall also mean a foster child or ward residing in the household of the named insured pursuant to a court order, guardianship, or placement by the Department of Family and Children Services or other department or agency of the state, while in a motor vehicle or otherwise.

(C) 'Property of the insured' as used in subsection (a) of this Code section means the insured motor vehicle and includes the personal property owned by the insured and contained in the insured motor vehicle.

(D) 'Uninsured motor vehicle' means a motor vehicle, other than a motor vehicle owned by or furnished for the regular use of the named insured, the spouse of the named insured, and, while residents of the same household, the relative of either, as to which there is:

- (i) No bodily injury liability insurance and property damage liability insurance;
- (ii) Bodily injury liability insurance and property damage liability insurance and the insured has uninsured motorist coverage provided under the insured's motor vehicle insurance policy; the motor vehicle shall be considered uninsured, and the amount of available coverages shall be as follows:

(I) Such motor vehicle shall be considered uninsured to the full extent of the limits of the uninsured motorist coverage provided under the insured's motor vehicle insurance policies, and such coverages shall apply to the insured's losses in addition to the amounts payable under any available bodily injury liability and property damage liability insurance coverages. The insured's uninsured motorist coverage shall not be used to duplicate payments made under any available bodily injury liability insurance and property damage liability insurance coverages but instead shall be available as additional insurance coverage in excess of any available bodily injury liability insurance and property damage liability insurance coverages; provided, however, that the insured's combined recovery from the insured's uninsured motorist coverages and the available coverages under the bodily injury liability insurance and property damage liability insurance on such uninsured motor vehicle shall not exceed the sum of all economic and noneconomic losses sustained by the insured. For purposes of this subdivision, available coverages under the bodily injury liability insurance and property damage liability insurance coverages on such motor vehicle shall be the limits of coverage less any amounts by which the maximum amounts payable under such limits of coverage have, by reason of payment of other claims or otherwise, been reduced below the limits of coverage;

(II) Provided, however, that an insured may reject the coverage referenced in subdivision (I) of this division and select in writing coverage for the occurrence of sustaining losses from the owner or operator of an uninsured motor vehicle that considers such motor vehicle to be uninsured only for the amount of the difference between the available coverages under the bodily injury liability insurance and property damage liability insurance coverages on such motor vehicle and the limits of the uninsured motorist coverages provided under the insured's motor vehicle insurance policies; and, for purposes of this subdivision, available coverages under

the bodily injury liability insurance and property damage liability insurance coverages on such motor vehicle shall be the limits of coverage less any amounts by which the maximum amounts payable under such limits of coverage have, by reason of payment of other claims or otherwise, been reduced below the limits of coverage; and

- (III) Neither coverage under subdivision (I) nor (II) of this division shall be applicable if the insured rejects such coverages as provided in paragraph (3) of subsection (a) of this Code section. For private passenger motor vehicle insurance policies in effect on January 1, 2009, insurers shall send to their insureds who have not rejected coverage pursuant to paragraph (3) of subsection (a) of this Code section a notice at least 45 days before the first renewal of such policies advising of the coverage options set forth in this division. Such notice shall not be required for any subsequent renewals for policies in effect on January 1, 2009, or for any renewals for policies issued after January 1, 2009. The coverage set forth in subdivision (I) of this division need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage set forth in subdivision (I) of this division and selected the coverage set forth in subdivision (II) of this division in connection with a policy previously issued to said insured by the same insurer;
- (iii) Bodily injury liability insurance and property damage liability insurance in existence but the insurance company writing the insurance has legally denied coverage under its policy;
- (iv) Bodily injury liability and property damage liability insurance in existence but the insurance company writing the insurance is unable, because of being insolvent, to make either full or partial payment with respect to the legal liability of its insured, provided that in the event that a partial payment is made by or on behalf of the insolvent insurer with respect to the legal liability of its insured, then the motor vehicle shall only be considered to be uninsured for the amount of the difference between the partial payment and the limits of the uninsured motorist coverage provided under the insured's motor vehicle insurance policy; or
- (v) No bond or deposit of cash or securities in lieu of bodily injury and property damage liability insurance.

(2) A motor vehicle shall be deemed to be uninsured if the owner or operator of the motor vehicle is unknown. In those cases, recovery under the endorsement or provisions shall be subject to the conditions set forth in subsections (c) through (j) of this Code section, and, in order for the insured to recover under the endorsement where the owner

or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact shall have occurred between the motor vehicle owned or operated by the unknown person and the person or property of the insured. Such physical contact shall not be required if the description by the claimant of how the occurrence occurred is corroborated by an eyewitness to the occurrence other than the claimant."

SECTION 2.

Said title is further amended by revising subsection (i) of Code Section 33-7-11, relating to uninsured motorist coverage under motor vehicle liability policies, as follows:

"(i) In addition to any offsets or reductions contained in the provisions of division (b)(1)(D)(ii) of this Code section, an endorsement or the provisions of the policy providing the coverage required by this Code section may contain provisions which exclude any liability of the insurer for injury to or destruction of property of the insured for which such insured has been compensated by other property or physical damage insurance and may contain provisions which exclude any liability of the insurer for personal or bodily injury or death for which the insured has been compensated pursuant to 'medical payments coverage,' as such term is defined in paragraph (1) of Code Section 33-34-2, or compensated pursuant to workers' compensation laws."

SECTION 3.

Said title is further amended by revising paragraph (2) of Code Section 33-9-4, relating to standards applicable to making and use of rates, as follows:

"(2) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable; provided, however, with respect to rate filings involving an increase in rates, no rate for personal private passenger motor vehicle insurance shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist;"

SECTION 4.

Said title is further amended by revising subsections (b) and (c) of Code Section 33-9-21, relating to maintenance and filing of rates, rating plans, rating systems, or underwriting rules and examination of claim reserve practices by the Commissioner, as follows:

"(b) Any domestic, foreign, or alien insurer that is authorized to write insurance in this state must file with the Commissioner any rate, rating plan, rating system, or underwriting rule for all personal private passenger motor vehicle insurance:

(1) For private passenger motor vehicle insurance providing only the mandatory minimum limits required by Code Section 33-34-4 and subsection (a) of Code Section 40-9-37, no such rate, rating plan, rating system, or underwriting rule shall become effective, nor may any premium be collected by any insurer thereunder, unless the filing has been received by the Commissioner in his or her office and such filing has been approved by the Commissioner or a period of 45 days has elapsed from the date such filing was received by the Commissioner during which time such filing has not been disapproved by the Commissioner. The Commissioner shall be authorized to extend such 45 day period by no more than 55 days at his or her discretion. If a filing is disapproved, notice of such disapproval order shall be given within 100 days of receipt of filing by the Commissioner, specifying in what respects such filing fails to meet the requirements of this chapter. The filer shall be given a hearing upon written request made within 30 days after the issuance of the disapproval order, and such hearing shall commence within 30 days after such request unless postponed by mutual consent. Such hearing, once commenced, may be postponed or recessed by the Commissioner only for weekends, holidays, or after normal working hours or at any time by mutual consent of all parties to the hearing. The Commissioner may also, at his or her discretion, recess any hearing for not more than two recess periods of up to 15 consecutive days each. In connection with any hearing or judicial review with respect to the approval or disapproval of such rates, the burden of persuasion shall fall upon the affected insurer or insurers to establish that the challenged rates are adequate, not excessive, and not unfairly discriminatory. After such a hearing, the Commissioner must affirm, modify, or reverse his or her previous action within the time period provided in subsection (a) of Code Section 33-2-23 relative to orders of the Commissioner. The requirement of approval or disapproval of a rate filing by the Commissioner under this subsection shall not prohibit actions by the Commissioner regarding compliance of such rate filing with the requirements of Code Section 33-9-4 brought after such approval or disapproval.

(2) For private passenger motor vehicle insurance other than that described in paragraph (1) of subsection (b) of Code Section 33-9-21, such rate, rating plan, rating system, or underwriting rule for all such private passenger motor vehicle insurance shall be effective upon filing and shall be implemented without approval of the Commissioner. This subsection shall apply to the entire private passenger motor vehicle insurance policy

with limits above the mandatory minimum required by Code Section 33-34-4 and subsection (a) of Code Section 40-9-37 and shall apply to the entire private passenger motor vehicle policy with minimum limits if such policy has any additional nonmandatory coverage or coverages.

(c) When a rate filing of an insurer required under paragraph (1) of subsection (b) of this Code section is not accompanied by the information upon which the insurer supports the filing and the Commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, then the Commissioner shall request in writing, within 20 days of the date he or she receives the filing, the specifics of such additional information as he or she requires, and the insurer shall be required to furnish such information, and in such event the 45 day period provided for in paragraph (1) of subsection (b) of this Code section shall commence as of the date such information is furnished."

SECTION 5.

(a) Except as otherwise provided by subsection (b) of this section, this Act shall become effective on January 1, 2009, and shall apply to all policies issued, delivered, issued for delivery, or renewed in this state on and after such date.

(b) Sections 3 and 4 of this Act shall become effective on October 1, 2008.

SECTION 6.

All laws and parts of laws in conflict with this Act are repealed.